

Amendment No. 2 to HB1540

Ramsey
Signature of Sponsor

AMEND Senate Bill No. 2518

House Bill No. 1540*

by deleting all language following the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 57-3-406, is amended by deleting subsection (e) and substituting instead the following:

(e) A retailer may sell, give away, or otherwise dispense alcoholic beverages only during the hours during which beer may be sold, given away, or otherwise dispensed for off premises consumption in the jurisdiction where the retailer is located, but at no time shall a retailer sell, give away, or otherwise dispense alcoholic beverages between the hours of 12:01 a.m. and 8:00 a.m.

SECTION 2. Tennessee Code Annotated, Section 57-3-406, is amended by deleting subsection (h).

SECTION 3. Tennessee Code Annotated, Section 57-3-811, is amended by deleting the section in its entirety and substituting instead the following:

A retail food store licensed to sell wine under this part 8 may sell, or give away, wine only during the hours during which beer may be sold, or given away for off premises consumption in the jurisdiction where the retail food store is located, but at no time shall a retail food store sell, give away, or otherwise dispense wine between the hours of 12:01 a.m. and 8:00 a.m.

SECTION 4. Tennessee Code Annotated, Section 57-3-404, is amended by adding the following new subsection:

(j)

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(1) No wholesaler licensed under § 57-3-203 shall be permitted to extend credit to any retailer licensed under § 57-3-204 unless pursuant to this subsection (j). All amounts due to any wholesaler from all sales to such retailers shall be due upon delivery of the product.

(2) Notwithstanding subdivision (j)(1), wholesalers licensed under § 57-3-203 may extend credit to a retailer licensed under § 57-3-204 for a period not to exceed ten (10) days from the date of the delivery of the product; provided, that the payment is effected by electronic funds transfer or escrow prepayment.

SECTION 5. Tennessee Code Annotated, Section 57-3-204(d), is amended by adding the following as a new subdivision:

(4)

(A) Notwithstanding § 57-3-406(b), if a retail licensee is not in debt to a wholesaler for any credit law violations or refused check and provides a thirty-day irrevocable notice of surrender to the commission prior to the termination of the license, the licensee shall be able to sell any unopened bottle inventory to any customer, retail licensee, or liquor by the drink licensee below the cost paid by the retailer to purchase the alcoholic beverages from the wholesaler so long as the price is not lower than ten percent (10%) of such purchase price.

(B) A retail licensee selling a product in accordance with this section shall not subsequently purchase that product from the wholesaler prior to termination of the license.

(C) A retail licensee or liquor by the drink licensee purchasing inventory from a retail licensee in accordance with this subdivision (d)(4) shall keep records indicating what products were purchased from the terminating licensee rather than a wholesaler.

(D) A retail licensee unable to sell product in accordance with this subdivision (d)(4) shall be able to keep the remaining product for personal use.

SECTION 6. Tennessee Code Annotated, Title 57, Chapter 3, is amended by adding the following as a new part:

57-3-1001.

This part shall be known and may be cited as the "Intoxicating Liquor Sales Law."

57-3-1002.

As used in this part, unless the context otherwise requires:

(1) "Basic cost of intoxicating liquor" means the invoice cost of intoxicating liquor to the retailer in the quantity last purchased from the wholesaler at prices generally available in the marketplace, absent any cash or other discounts, incentives and/or concessions of any kind, whether such discounts, incentives, or concessions are offered within or outside of this state, to which shall be added the full face value of any taxes, freight, or delivery fees which may be required by any tax law of this state imposed upon intoxicating liquor supplied to retailers now in effect or hereafter enacted, and any other taxes or fees imposed by this title, if not already included by the wholesaler in this price;

(2) "Commission" means the alcoholic beverage commission;

(3) "Cost of doing business by the retailer" is twenty percent (20%) of the basic cost of intoxicating liquor to the retailer;

(4) "Cost to the retailer" means the "basic cost of intoxicating liquor" to the retailer plus the "cost of doing business by the retailer";

(5) "Intoxicating liquor" means and includes alcohol, spirits, liquors, and every liquid or solid, patented or not, containing alcohol, spirits, liquor, or wine and capable of being consumed by human beings, but nothing in this part shall be construed or defined as including or relating to the sale of any beverage having an alcoholic content of eight percent (8%) by weight or less;

(6) "Prices generally available in the marketplace" means the price of intoxicating liquor based upon a purchase from a wholesaler on terms and conditions:

(A) Typically available to non-food store retailers in the trade area in which the retailer is located; and

(B) In accordance with the requirements set forth in § 57-3-813;

(7) "Retailer" means the holder of a retailer license under § 57-3-204;

(8) "Sell at retail," "sales at retail" or "retail sales" means and includes any transfer of title to tangible personal property for a valuable consideration made in the ordinary course of trade or usual prosecution of the seller's business, to the purchaser for consumption or use; and

(9) "Wholesaler" has the same meaning as provided in § 57-3-101(a).

57-3-1003.

(a) It is a Class C misdemeanor for any retailer to advertise, offer to sell, or sell at retail, intoxicating liquor at less than cost to the retailer.

(b) The advertising, sale, or offer to sell of intoxicating liquor by any retailer at less than cost to the retailer shall be prima facie evidence of both a violation of this part, and of intent to injure competitors or destroy substantially or lessen competition.

57-3-1004.

Any individual who, as a director, officer, partner, member, or agent of any person violating the provisions of this part, assists or aids, directly or indirectly, in such violation, equally with the person for whom such individual acts, commits a Class C misdemeanor.

57-3-1005.

Any contract, express or implied, made by any person, firm, or corporation in violation of any of the provisions of this part is declared to be an illegal and void contract and no recovery thereon shall be had.

57-3-1006.

(a)

(1) Any person or entity injured by any violation of this part, or any trade association which is representative of such a person or entity, may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation.

(2) If, in such action, a violation of this part shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit.

(3) In such action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in the action, in addition to such injunctive relief and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this part may maintain an action for damages alone in any court of general

jurisdiction, and the measure of damages in such action shall be the same as prescribed in subsection (a).

57-3-1007.

(a) The commission shall administer and enforce this part.

(b)

(1) For an initial violation of or noncompliance with any provision of this part by a retailer, a penalty shall be imposed not to exceed one thousand dollars (\$1,000);

(2) For any second violation of or noncompliance with any provision of this part by any retailer who has previously been found in violation pursuant to subdivision (b)(1), a penalty shall be imposed not to exceed two thousand five hundred dollars (\$2,500); and

(3) For any subsequent violation or violations of or noncompliance with any provision of this part, by any retailer who has previously been found in violation pursuant to subdivision (b)(2), a penalty shall be imposed not to exceed five thousand dollars (\$5,000).

(c) Any retailer who is assessed a civil penalty pursuant to this section, and who continues to engage in the unauthorized sale, distribution, or handling of intoxicating liquor in this state, either directly or through any agent or third party acting on behalf of such retailer, shall be charged with an additional violation of this part.

(d) Any retailer who is adversely affected by a decision of the commission may petition the commission for a hearing which will be held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(e) In enforcing the provisions of this part, the commission shall consider the cost and effectiveness of administration and endeavor to administer this part in the most cost-efficient manner.

57-3-1008.

This part shall not apply to sales at retail made where intoxicating liquors are:

- (1) Sold upon the complete final liquidation of a business;
- (2) Advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court;
- (3) Closeouts and case discounts; or
- (4) Such other occasional discounts as defined by the commission.

SECTION 7. Tennessee Code Annotated Section 57-3-204(a) is amended by deleting the subsection and substituting instead the following:

(a) For the retail sale of alcoholic spirituous beverages, including beer and malt beverages, as in this chapter defined, a license may be approved for transfer and reissued as herein provided. New licenses shall only be issued for jurisdictions that first approve the retail sale of alcoholic spirituous beverages by local option election conducted under § 57-3-106 after April 1, 2018. Except as provided in the preceding sentence, in all instances, any person, firm, or corporation desiring to sell alcoholic spirituous beverages, including beer and malt beverages, to patrons or customers, in sealed packages only, and not for consumption on the premises except for conducting tastings pursuant to § 57-3-404(h)(2), shall first purchase an existing license, or acquire the right to purchase an existing license, from an existing licensee and then make application to the commission for the transfer of such existing retailer's license, which application shall be in writing and verified, on forms herein authorized to be prescribed and furnished, and disclosing the name of the proposed transferor of the license; and the commission may, subject to the restrictions of this chapter, approve the transfer of such retailer's license as set forth in § 57-3-212. If the premises with respect to which the license transfer is sought is owned by a person, firm, or corporation not the applicant, the application shall include the name and address of the owner. If the ownership of the premises should change after a license is granted, the licensee shall, within ten (10) days after becoming aware

of such change in ownership, notify the commission in writing of the name and address of the new owner.

SECTION 8. Tennessee Code Annotated Section 57-3-204(b)(1), is amended by deleting the subdivision and substituting instead the following:

(1) Each applicant for a retail license or retail license transfer shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars (\$300) when the application or application for transfer is submitted for review. A retailer's license under this section shall not be issued or transferred until the applicant has paid to the commission the annual license fee of eight hundred fifty dollars (\$850).

SECTION 9. Tennessee Code Annotated Section 57-3-204(b)(2) is amended by deleting the following language:

(2) No retail license under this section may be issued to any individual and substituting instead the following:

(2) No retail license under this section may be issued, transferred, or held by to any individual

SECTION 10. Tennessee Code Annotated Section 57-3-204(b)(3), is amended by deleting the following language:

(3) The commission may, in its discretion, issue such a retail license to a corporation; provided, that no such license shall be issued to any corporation unless such corporation meets the following requirements:

(A) No retail license shall be issued to any corporation if any officer, director or stockholder owning any capital stock in the corporation, would be ineligible to receive a retailer's license for any reason specified in subdivision

(b)(2), if application for such retail license had been made by the officer, director or stockholder in their individual capacity;

and substituting instead the following:

(3) The commission may, in its discretion, issue such a retail license to a corporation; provided, that no such license shall be issued to, transferred to, or maintained by any corporation unless such corporation meets the following requirements:

(A) No retail license shall be issued to, transferred to, or maintained by any corporation if any officer, director, or stockholder owning any capital stock in the corporation, would be ineligible to receive a retailer's license for any reason specified in subdivision (b)(2), if application for such retail license had been made by the officer, director, or stockholder in their individual capacity;

SECTION 11. Tennessee Code Annotated Section 57-3-212(a), is amended by deleting the subsection and substituting instead the following:

(a) The holder of a license may not sell, assign, or transfer such license to any other person other than to a person that the commission has approved pursuant to § 57-3-204. Any license issued or approved for transfer shall be good and valid only for the twelve (12) months after the same was issued or approved for transfer by the commission. The license proposed to be transferred may be for the same location or, with commission approval, transferred from one (1) location to another, so long as the location of the relocated licensed premises is not within one thousand five hundred feet (1,500') of another location engaged in the retail sale of alcoholic spirituous beverages and is located within the same jurisdiction wherein the transferor premises was located.

SECTION 12. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 13. Section 3 of this act shall take effect January 1, 2019, the public welfare requiring it, and all other Sections of this act shall take effect upon becoming a law, the public welfare requiring it. Sections 7 through 11 of this act shall be repealed effective July 1, 2021,

and the provisions of §§ 57-3-204 and 57-3-212 as they existed prior to being amended by Sections 7 through 11 of this act shall be reinstated, the public welfare requiring it.